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Deputy County Attorney  
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Attorney for Respondent Cascade County

CLERK OF DISTRICT COURT

CLERK NO. 2

DATE 2/10/11

FILED SB 17/18

*Copy*

**MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY**

J.G. SHOCKLEY,

Petitioner,

vs.

CASCADE COUNTY,

Respondent.

ADV-10-534

CASCADE COUNTY'S ANSWER  
TO PETITION

**COPY**

Carey Ann Shannon, Deputy Cascade County Attorney on behalf of Cascade County hereby answers and responds to the Petition of Petitioner J.G. Shockley.

**FIRST DEFENSE**

The Petition should be dismissed, in whole or in part, for failure to state claims upon which relief can be granted because the right of individual privacy clearly exceeds the public's right to know or the merits of public disclosure.

**SECOND DEFENSE**

The Petition should be dismissed, in whole or in part, for failure to state claims upon which relief can be granted because it fails to join Jason Carroll, the Teamsters Union Local No. 2, and the Montana Association of Counties (MACo) each of which are an indispensable party.

*B*

### **THIRD DEFENSE**

The Petition should be dismissed, in whole or in part, for failure to state claims upon which relief can be granted because it seeks disclosure of information protected by the Attorney Client Privilege or the Work Product Doctrine.

### **FOURTH DEFENSE**

The Petition should be dismissed, in whole or in part, for failure to state claims upon which relief can be granted because the Petitioner lacks standing for the reason that he is not a resident or taxpayer of Cascade County.

### **FIFTH DEFENSE**

The Petition should be dismissed, in whole or in part, for failure to state claims upon which relief can be granted for the reason that the settlement referenced in the Petition did not involve the expenditure of County money.

### **SIXTH DEFENSE**

With respect to the specific allegations of the Petition, the Respondent states as follows:

1. With respect to Facts Paragraph 1, it is admitted upon information and belief that Shockley is a citizen of Montana. It is denied that he has sufficient standing or interest in the requested documents or information. He is not a resident or taxpayer of Cascade County. The settlement proceeds were not the expenditure of County monies. Rather, the settlement was paid by the insurance pool of the Montana Association of Counties (MACo). Only the "governmental portion" of a settlement agreement is a public record available for public inspection and only upon the requisite showing. Mont. Code Ann. § 2-9-304 (2).

2. With respect to Facts Paragraph 2, the first sentence is admitted. The second sentence is admitted. The third sentence is admitted. The fourth sentence is denied for the reason

that the County Commission did not pay the settlement, but the settlement was paid by the Montana Association of Counties (MACo), with Sheriff Castle's consultation and approval, based upon the rights reserved under the applicable insurance agreement. The fifth sentence is denied. In fact, Jason Carroll was charged by the office of the County Attorney, but the charge was ultimately dismissed.

3. With respect to Facts Paragraph 3, the allegations are admitted.

4. With respect to Facts Paragraph 4, the allegations are admitted.

5. With respect to Law Paragraph 1, the allegations are admitted.

6. With respect to Law Paragraph 2, the allegations call for the legal conclusions. It is otherwise generally admitted.

7. With respect to Law Paragraph 3, it is admitted that the District Court has jurisdiction to consider a request for release of information, but it is denied that such release is appropriate in this matter.

8. With respect to Law Paragraph 4, the allegations are admitted.

9. With respect to Law Paragraph 5, the allegations call for legal conclusions. The first sentence is otherwise admitted in part and denied in part as some of the requested information or documents may fall within the Attorney Client Privilege or the Work Product Doctrine involving the County's retained counsel. The second sentence is specifically denied. The third sentence is pure legal conclusions to which neither admission or denial is required.

10. With respect to Law Paragraph 6, it is denied that attorney fees and costs are warranted in this matter.

11. With respect to "Argument," Cascade County responds that the Court must balance the merits of public disclosure or right to know against the individual right of privacy.


Here, the Petition seeks disclosure of confidential criminal justice information and vast disclosure of records or information relating to the employment and termination of former Cascade County Detention Officer Jason Carroll, who is an indispensable party and who has not been joined. Based upon information and belief, both the Montana Association of Counties and the Teamsters Union Local No. 2 assert a right of confidentiality in the Settlement Agreement as well. The County does not have the authority to waive Jason Carroll's privacy rights, nor the rights of the Montana Association of Counties and the Teamsters Union Local No. 2 in the Settlement Agreement. The bases in support of infringing upon Jason Carroll's privacy rights are that the Petitioner is a citizen of the State of Montana and the matter ostensibly involves the expenditure of public funds. The settlement with Jason Carroll was not paid by the County Commission, but it was paid through insurance proceeds from the Montana Association of Counties. Even if the settlement involved the direct expenditure of the monies of Cascade County, the Petitioner is not a taxpayer or resident of Cascade County. Absent standing and a compelling reason, there is insufficient interest for infringing upon another's right of privacy. Moreover, the "rationale for paying" settlement with Jason Carroll (Petition opening paragraph) necessarily involves disclosures prohibited by the Attorney Client Privilege and the Work Product Doctrine.

Having answered and responded to the Petition, Cascade County requests the following relief:

1. That the Petition be denied and dismissed;
2. That the Petition not be heard unless Petitioner joins Jason Carroll, the Teamsters Union Local No. 2, and the Montana Association of Counties (MACo) each of which are an indispensable party;

3. That disclosure not be permitted prior to an *in camera* review of the requested documents or information;
4. That disclosure not be permitted unless there is a finding that the merits of public disclosure clearly exceed the individual right to privacy;
5. That in the event the Court authorizes disclosure of all or part of any confidential criminal justice information that Petition assume equal responsibility for the security of the information and that such records retain their designation as confidential.
6. That disclosure not infringe upon the Attorney Client Privilege or the Work Product Doctrine;
7. That Petitioner's attorney fees and costs be denied; and
8. That the Court award such other relief it deems appropriate.

DATED this 9<sup>th</sup> day of July, 2010.

  
Carey Ann Shannon, Deputy County Attorney

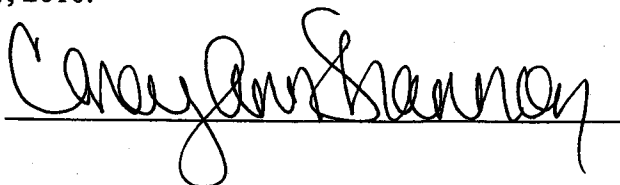
**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was duly served upon the following by mail, Federal Express, Hand-delivery or Facsimile transmission:

☒ U.S. Mail    ☐ Federal Express    ☐ Hand-Delivery    ☐ FAX transmission

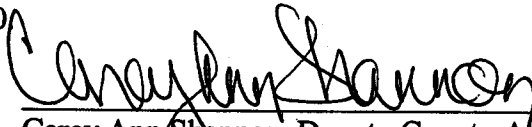
J.G. Shockley  
P.O. Box 608  
Victor, MT 59875

DATED this 9<sup>th</sup> day of July, 2010.



3. That disclosure not be permitted prior to an *in camera* review of the requested documents or information;
4. That disclosure not be permitted unless there is a finding that the merits of public disclosure clearly exceed the individual right to privacy;
5. That in the event the Court authorizes disclosure of all or part of any confidential criminal justice information that Petitioner assume equal responsibility for the security of the information and that such records retain their designation as confidential.
6. That disclosure not infringe upon the Attorney Client Privilege or the Work Product Doctrine;
7. That Petitioner's attorney fees and costs be denied; and
8. That the Court award such other relief it deems appropriate.

DATED this 9<sup>th</sup> day of July, 2010

  
Carey Ann Shannon, Deputy County Attorney


**CERTIFICATE OF SERVICE**

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J.G. Shockley  
P.O. Box 608  
Victor, MT 59875

DATED this 9<sup>th</sup> day of July, 2010.



# Montana State Senate



**SENATOR JIM SHOCKLEY**  
SENATE DISTRICT 45

HELENA ADDRESS:  
PO BOX 200500  
HELENA, MONTANA 59620-0500  
PHONE: (406) 444-4800

HOME ADDRESS:  
PO BOX 608  
VICTOR, MONTANA 59875  
PHONE: (406) 642-6647/3792 (OFFICE)  
(406) 642-3817 (HOME)

COMMITTEES:  
JUDICIARY  
STATE ADMINISTRATION  
ETHICS  
LOCAL GOVERNMENT

*The Big Sky Country*

19 July 2010

Cascade County Attorney's Office  
Attn: John Parker  
121 4<sup>th</sup> Street North  
Great Falls, Montana 59401

RE: Petition

Dear John,

I am writing this letter for two reasons. One is that you do not return my telephone calls; the other is that I was a little surprised when I got the answer to my petition. It may be that you were not aware of the substance of the state's answer. In a large office I know that you cannot see every piece of paper that goes out.

My understanding was that I would file the petition to conform to the law and protect your office, but that your office would not put up a defense. For my part I would not go to the media until I saw what was in the file; you had assured me that taken in context I would not be so aggravated by what had been reported to me.

In any event, I will not do anything further until the 30th of this month. If the answer recently filed is still the county's position, I will ask for a hearing. In that event, we might do well to agree to a stipulation of facts: e.g., that Jason Carroll was a detention officer, and ex-cetera. Mr. Carroll's attorney, Pat Flaherty, has given me a release to see his files.

Respectfully,

  
Jim Shockley

JGS/jgs

cc: Political file  
Mr. Flaherty

*Blind  
copy  
Mark N*

July 2, 2010

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F1  
Call  
Patrick F.  
Flaherty, Esq.  
ATTORNEY AT LAW

Roger Witt  
Attorney at Law  
P.O. Box 1746  
Great Falls, MT 59403

1026 First Avenue South  
P.O. Box 1968  
Great Falls, MT 59403  
(406) 727-8494  
Fax (406) 727-8537  
E-Mail: patrick@mt.net

Jim Schockley  
P.O. Box 608  
Victor, MT 59875

RE: Consent to Release Case File

Dear Roger and Jim:

I have received a copy of Jim's Petition to Gain Access to the Records Pertaining to Jason Carroll. I think this file is already in the public arena in the Unemployment Benefits Appeal Case. I think virtually everything that could be relevant is there with the exception of the settlement agreement.

Notwithstanding the foregoing, Jason Carroll is fully supportive of the "sunlight policy" and gives his permission to both of you gentlemen to have access to his file to make it available to the legislature, the media or whatever other body you gentlemen wish to discuss the matter of his case, and the Cascade County Sheriff's Office with.

Sincerely,

  
Patrick F. Flaherty  
Attorney at Law

PFF/acp

CONSENT

I, Jason Carroll, have read the foregoing letter, and give my permission to disclose any and all records pertaining to my employment and settlement with the Cascade County Sheriff's Office to Jim Shockley to share with the legislature, the media, or however they deem best.

  
JASON CARROLL